

USSN: 10/079,685  
Atty. Docket No.: 10256A  
Amtd. dated January 5, 2004  
Reply to Office Action of October 3, 2003

### REMARKS

Claims 1-9 and 11-29 are pending, with claim 10 being canceled and claims 22-29 withdrawn from consideration. Claims 1-21 were rejected in the Office Action under 35 U.S.C. Sections 103. Claims 1-29 are subject to restriction and/or election requirements. Each of the rejections and restriction and/or election requirements will be addressed below in the order presented in the Office Action.

### Election/Restrictions

Applicant's election to prosecute Group I claims 1-21 with traverse is affirmed. Reconsideration of the Restriction Requirement is respectfully requested. A search conducted for the product claims of Group I will, by necessity, include the same prior art searched for the process claims of Group II. In keeping with the Patent Office's policy to examine applications in the most efficient manner, it is respectfully submitted that Group I and Group II claims should be examined together. Moreover, claim 29 is a product claim dependent on claim 1. Claims 22-29 remain pending for purposes of reconsidering the Restriction Requirement.

### Rejections Under 35 U.S.C. Section 103

Paragraphs 7 and 8 of the Office Action reject claims 1-21 under 35 U.S.C. Section 103 as being unpatentable over U.S. Patent 6,013,353 to Touhsaent in view of U.S. Patent 5,554,245 to Schuhmann et al.

As described in this application, an important feature of the claimed films is the functional interrelationship of the core and sealant layers capable of producing a highly effective hermetically sealable film. Specifically, it has been determined that the core layer and the sealant layer should function together to provide "compliance" of the film between the sealing jaws. In other words, it has been determined to provide a highly effectively hermetic seal, the two layers must have compositions with sufficient flow properties and thicknesses to deform and fill the spaces between the sealing jaws forming the hermetic seal upon the application of heat and pressure. See, pages 9-11 of the specification. These compositional and thickness features are recited in the claims.

With this Response, the claims are amended to clarify certain features of the present invention. In particular, all claims now recite that thickness of the core and sealant layers range

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from 5  $\mu\text{m}$  to 25  $\mu\text{m}$  and 5  $\mu\text{m}$  to 10  $\mu\text{m}$  respectively. The claims are also amended to recite that previously designated layer B is the core layer and previously designated layer C is the sealant layer. Support for these amendments is found throughout the specification and on page 9, lines 17-25 specifically. It is noted that original claim 12 recited these thicknesses of the core and sealant layers and original claim 10 recited the sealant layer thickness. Original claim 10 is canceled because it is redundant with amended claim 1.

The claimed combination of compositional and structural features are not taught or suggested by the Touhsaent or Schuhmann references taken either alone or in combination. As such, the rejection of claims 1-21 under 35 U.S.C. 103 is respectfully traversed. As acknowledged in the Office Action, Touhsaent, the primary reference, does not disclose the use of a softening agent in a core layer. The Office Action asserts that it would have been obvious to include a hydrocarbon resin additive in the core layer of Touhsaent as suggested by Schuhmann. However, Touhsaent is very specific regarding the core layer properties and, among other directives, advises that the core layer should have a high degree of crystallinity. See, column 2, lines 31-34. Therefore, one would not be motivated to alter the films of Touhsaent by incorporating a hydrocarbon resin in the core layer which would lower the crystallinity.

However, even if a hydrocarbon resin is included in the core of Touhsaent, the claimed films would not result. The sealant functionality of Touhsaent is provided by low temperature sealable "coatings" of carboxylic acid based copolymers. See, column 4, line 31 through line 46 of column 7. The coating is not a layer with the thicknesses of the recited sealant layer and thus cannot provide, in conjunction with the core layer, the compliance features of the claimed films. The polymeric "skin layers" referred in the Office Action are not sealant layers. See, line 10 of column 3 through line 30 of column 4. Therefore, the skin layers do not suggest the claimed sealant layer.

Accordingly, even if a hydrocarbon resin is added to the core layer of Touhsaent, the claimed films are not realized as concluded in the Office Action.

Claims 1-21 are rejected in paragraph 9 of the Office Action under 35 U.S.C. Section 103 as being unpatentable over U.S. Patent 5,500,090 to Peiffer et al. or U.S. Patent 5,945,225 to Speith-Herfurth et al. in view of U.S. Patent 5,527,608 to Kemp-Pratchett et al. The rejections are premised upon the conclusion that the Peiffer and Speith-Herfurth references teach or suggest

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the claimed core and sealant layers and it would be obvious to combine these films with conventional packaging films such as disclosed by Kemp-Patchett. However, both Peiffer and Speith-Herfurth fail to teach or suggest a sealant layer having a thickness of 5  $\mu\text{m}$  to 10  $\mu\text{m}$  in combination with a core layer having a thickness of 5  $\mu\text{m}$  to 25  $\mu\text{m}$  as recited in the claims. Specifically, Peiffer teaches that an outer heat sealable layer is to have a thickness of no more than 3  $\mu\text{m}$ , with 0.4 to 2  $\mu\text{m}$  being preferred. See, column 7, lines 8-11. Likewise, Speith-Herfurth advises that the thickness of an outer heat sealable layer is not to exceed 4  $\mu\text{m}$ . See, column 5, lines 1-4. Therefore, both the Peiffer and Speith-Herfurth references expressly teach away from the claimed sealant layer thickness. For this reason alone, these references alone or in combination with the Kemp-Patchett references do not render claims 1-21 obvious under Section 103.

Paragraph 10 of the Office Action rejects claims 1-9, 11, and 13-21 under Section 103 as being unpatentable over Schuhmann et al. in view of Kemp-Pratchett et al. This rejection concludes it would be obvious to combine the films of Schuhmann with conventional packing films layers such as metallized polyethylene films as disclosed in Kemp-Pratchett to enhance various film properties. Thus, the rejection relies upon Schuhmann to provide the teaching or suggestion of the claimed skin layer. As with respect to the other references discussed above, the Schuhmann reference not only fails to suggest the claimed thickness of the sealant layer but teaches away from the claimed layer by expressly teaching that polymeric sealant layers should be much thinner than claimed. For example, at column 5, lines 5-6, Schuhmann states that the thickness of the top layer(s) (the sealable layer) ranges from .4  $\mu\text{m}$  to 1.0  $\mu\text{m}$ . Further, Example 1 provides that the top layers are .6  $\mu\text{m}$  thick. Therefore, even if the teachings of the references are combined as applied in the Office Action, the claimed film structures reciting the respective thicknesses of the core and sealant layers is not suggested by the combination. For this reason alone, it is respectfully submitted that claims 1-9, 11, and 13-21 are not rendered obvious by the cited references.

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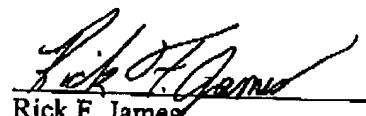
**Conclusion**

Consistent with the foregoing, claims 1-9 and 11-21 are believed to be in condition for allowance. Reconsideration of the Restriction Requirement and the claim rejections with an early Notice of Allowance is respectfully submitted.

It is believed that this submission is fully responsive to the outstanding Office Action. However, should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number listed below so that all matters may be expeditiously resolved.

Respectfully submitted,

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